IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3135 OF 1996

Shri Dattu Appa Patil, aged: adult, occ: Agri. R/o. Asurle, Tal. Panhala, Dist. Kolhapur (since deceased), by legal heirs and representatives :.

1a. Shri Ananda Dattu Patil, age 45 years, Occ. Agriculturist.

1b. Shri Sadashiv Dattu Patil, age 40 years, Occ. Agriculture.

1c. Shri Maruti Dattu Patil, age about 30 years, Occ. Agriculture.

All residing at Asurle, Taluka Panhala, District Kolhapur. ... Petitioners

Versus

1. State of Maharashtra through the Additional Chief Secretary and Officer on Special Duty (Appeals), Revenue and Forest Deptt. having office at Churchgate, Mumbai.

2. The Settlement Commissioner & Director of Land Records (Maharashtra State), Pune.

3. Shri Rama Yesaba Patil, Aged: adult, Occ: Agriculturist, R/o. Asurle, Tal. Panhala, Dist. Kolhapur. ... Respondents.

Mr. N.V. Bandiwadekar for the petitioners.

Ms. P.S. Cardozo, A.G.P. for respondents 1 and 2.

Mr. Railkar for respondent 3.

ALONG WITH

SECOND APPEAL NO.88 OF 2005

1. Rama Yesaba Patil Age 34 years.)
2. Ananda Yesaba Patil, Age 49 years.)
3. Laxman Yesaba Patil, Age 31 years,) All R/o. Asurle, Tal. Panhala, District) Kolhapur.) ... Appellants.

Versus

Dattu Appa Patil,) since deceased through heirs.)

1a. Ananda Dattu Patil, age 45 years,)

1b. Sadashiv Dattu Patil, age 35 years,)

1c. Maruti Dattu Patil, age about 25 years,) 1a to 1c R/o. Asurle, Tal. Panhala,) District Kolhapur.)

1d. Sou. Akkatai Popat Dhanavade, Age) 38 years, Resident of Kurlap, Taluka) Walva, District Sangli.) ... Respondents

Mr. Railkar for the appellants.

Mr. N.V. Bandiwadekar for the respondents.

CORAM : SMT. RANJANA DESAI & SMT. V.K. TAHILRAMANI, JJ.

DATE ON WHICH THE JUDGMENT IS RESERVED : 21ST SEPTEMBER, 2006.

DATE ON WHICH THE JUDGMENT IS PRONOUNCED : 3RD OCTOBER, 2006.

JUDGMENT :- (Per Smt. Ranjana Desai, J.)

1. In the instant writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioners have challenged order dated 5/3/1994 passed by respondent 2 - the Settlement Commissioner and Director of Land Records, Pune, and order dated 13/10/1995 passed by respondent 1 - the State of Maharashtra.

2. The facts, which give rise to the present petition may be shortly stated.

Appa Rama Patil, the father of the original petitioner owned agricultural lands in Village Asurle, Taluka Panhale, District Kolhapur. Yesaba Rama Patil - the father of respondent 3 owned Jirayat land bearing Survey No.25/6 admeasuring 10 Gunthas and one Rama Dhondi Patil owned land bearing Survey No.77/3B. In 1962, the Consolidation Scheme framed under The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short, “the said Act”) came to be applied to Village Asrule. The work of consolidating small pieces of lands into larger blocks was undertaken. As a part of the Consolidation Scheme, land bearing Survey No.25/6 admeasuring 10 Gunthas belonging to Yesba Rama Patil - the father of respondent 3 was allotted to Appa Rama Patil - the father of the original petitioner since, he also owned land bearing Survey No.25/7 admeasuring 11 Gunthas. The consolidated land was given Gat No.72 (for convenience, “the suit land”). In exchange, Yesba Rama Patil came to be allotted land bearing Survey No.25/2 admeasuring 8 Gunthas, land bearing Survey No.77/2B admeasuring 2 Gunthas owned by Appa Rama Patil and land bearing Survey No.77/3B

admeasuring 1 Guntha owned by Rama Dhondi Patil. The said consolidated land was allotted Gat No.68. Thus for the area of 10 Gunthas lost by Yesba Rama Patil, he came to be allotted an area of 11 Gunthas. This exchange of lands which took place in 1962 was by mutual consent.

3. On 2/1/1983, Appa Rama Patil died leaving the original petitioner as his heir. Yesaba Rama Patil died leaving respondent 3 as his heir.

4. According to the petitioner, on 25/8/1989, respondent 3 tried to obstruct his possession of the suit land i.e. Gat No.72. Therefore, the petitioner filed Regular Civil Suit No.97 of 1989 against respondent 3 and his brother for injunction. The petitioner filed an application for temporary injunction. On 5/9/1989, the Civil Court granted ad-interim temporary injunction restraining respondent 3 from interfering with the possession of the petitioner. It was confirmed on 27/10/1989. Against the said order, respondent 3 filed Misc. Civil Appeal No.230 of 1989. It was dismissed on 19/3/1991.

5. It appears that in the meantime, respondent 3 made a complaint to respondent 2 - the Settlement Commissioner that the exchange of lands done in the year 1962 during the consolidation proceedings is illegal and without consent of his father. He prayed that the said consolidation of lands be cancelled and the Consolidation Scheme be varied to restore to him the land which had originally belonged to his father at the time of preparation of the Consolidation Scheme. Pursuant to the said complaint, the Assistant

Consolidation Officer, Kolhapur held enquiry under the instructions of respondent 2. He recorded the statements of respondent 3 and his brothers and also of the petitioner. On 30/10/1990, the Assistant Consolidation Officer issued a notice to the petitioner proposing variation in the Consolidation Scheme as per the complaint of respondent 3. On 15/11/1990, the petitioner filed his objections to the said notice and requested that the proposed variation should not be effected. On 14/1/1992 and 3/11/1993, the Consolidation Officer, Kolhapur, recorded the statements of the petitioner and respondent 3. By order/communication dated 5/3/1994, respondent 2 informed the petitioner that as per the complaint of respondent 3, the Consolidation Scheme had been varied on 9/10/1992. The petitioner was informed that in the enquiry it was found that the petitioner is not in possession of the land exchanged in the sanctioned scheme and the objection of the petitioner is not valid. The petitioner was informed that the varied scheme was sanctioned by making final the original holdings and, therefore, the objection application was filed.

6. Being aggrieved by this order, the petitioners filed revision application under section 35 of the said Act before respondent 1 - the Additional Chief Secretary and Officer on Special Duty (Appeals), Revenue and Forest Department, Government of Maharashtra. By order dated 13/10/1995, respondent 1 dismissed the said revision application and, hence, this writ petition.

7. At this stage, it must be noted that Regular Civil Suit No.97 of 1989 filed by the original petitioner against respondent 3 and his brothers was decreed on 17/2/1998. Respondent 3 and his brothers were perpetually restrained from interfering with the original petitioner's possession of the said land. Regular Civil Appeal No.120 of 1998 filed by respondent 3 was dismissed on 3/9/2004. Being aggrieved by the said judgments, respondent 3 filed Second Appeal No.88 of 2005 in this court. On 9/2/2005, the said second appeal was admitted. The learned single judge noted that the instant writ petition is pending in this court and, in that, there is a challenge to the order of variation of the Consolidation Scheme. The learned single judge framed the following substantial questions of law.

> "(i) Whether the courts below committed an error by not considering the variation of the consolidation scheme by the Competent Authority ?
>
> (ii) Whether the trial court could have proceeded with the hearing of the suit in view of the pendency of the proceedings in which challenge was to the order of variation of the Consolidation Scheme passed by the Competent Authority ?"

The learned single judge gave liberty to respondent 3 to move the Chief Justice for placing the Second Appeal No.38 of 2005 for hearing along with Writ Petition No.3135 of 1996. Accordingly, respondent 3 has taken steps and the said second appeal is tagged to the present writ petition.

8. We have heard the learned counsel for the parties. With the

assistance of the learned counsel for the parties, we have gone through the relevant documents. Mr. Bandiwadekar, the learned counsel appearing for the petitioners submitted that respondents 1 and 2 have erred in allowing variation of the Consolidation Scheme. He submitted that the Consolidation Scheme was made applicable to Asrule Village in the year 1962. Exchange of land between Yesba Rama Patil - the father of respondent 3 and Appa Rama Patil - the father of the original petitioner pursuant to the Consolidation Scheme was done in the year 1962 by consent. Yesba Rama Patil - the father of respondent 3 died on 2/1/1983. During his life time, he never complained about the allotment of his land to Appa Rama Patil - the father of the original petitioner as per the said Consolidation Scheme. It is only respondent 3 who made a belated complaint to respondent 2 - the Settlement Commissioner in the year 1989 stating that the exchange of land done in the year 1962 is illegal. Mr. Bandiwadekar submitted that such a belated application should not have been entertained by the authorities below. In this connection, the learned counsel relied on the judgment of this court in ***Gunda Tuka Shinde since by his heir Bajirao Tukaram Shinde v. Pandharinath Ramrao Shinde & Anr., 1991 Mh.L.J. 669*** and the judgment of the Division Bench of this court dated 24/2/2003 in Writ Petition No.3043 of 1993 in ***Krishna Mallu Sidgonda v. The Settlement Commissioner and Director of Land Records & Others***. He also relied on another judgment of this court in ***Gulabrao Bhaurao Kakade since deceased by L.Rs. & Ors. v. Nivrutti Krishna Bhilare & Ors., 2001 (4) Mh.L.J. 31***. Mr. Bandiwadekar contended

that though section 32(1) of the said Act prescribes no period of limitation, the power to vary the scheme has to be exercised within a reasonable period. He submitted that as per the judgment of this court in ***Gulabrao' case (supra)***, three years period after finalization of the scheme under section 22 could be the reasonable period within which power under section 32(1) of the said Act could be exercised. He submitted that variation of this scheme done after 32 years was improper and illegal. In this connection Mr. Bandiwadekar also relied on the judgment of the Supreme Court in ***Mohamad Kavi Mohamad Amin vs. Fatmabai Ibrahim (1997) 6 SCC 71*** where the Supreme Court has observed that where statute prescribes no time limit for exercise of power it should be exercised within a reasonable time. The learned counsel contended that besides in this case, exercise of powers under section 32(1) is not justified at all. There is absolutely no error, illegalities or informalities in the scheme which required its variation. The exchange of land was done with the consent of the parties. The original petitioner and his heirs were in possession of the land in question and continue to be in possession thereof and, therefore, the authorities erred in varying the scheme.

9. Mr. Bandiwadekar further pointed out that in the civil suit filed by the father of the original petitioner against respondent 3 for perpetual injunction restraining respondent 3 from interfering with the land in question, a decree was passed on 22/1/1998 and respondent 3 was perpetually restrained from interfering with the possession of the original petitioner over the said land.

Appeal carried from the said order by respondent 3 was also dismissed. Both the courts have after considering the relevant record concurrently held that the possession of the said land is with the petitioners. The learned counsel contended that in that suit, the court was only concerned with the question of possession. Since the civil court was only examining the question of possession, it was not necessary for the civil court to wait for the conclusion of the proceedings in which challenge to the order of variation of the Consolidation Scheme was raised. He submitted that there is no substantial question of law involved in the second appeal and, hence, the second appeal be dismissed. Mr. Bandiwadekar submitted that the finding of the civil court goes a long way in establishing the petitioner's case that as per section 22 of the said Act, the Consolidation Scheme had, in fact, come into force. Mr. Bandiwadekar contended that in the circumstances of the case the writ petition be dismissed.

10. Mr. Railkar, on the other hand, submitted that the scheme has been rightly varied. He pointed out that the Settlement Commissioner conducted an enquiry and in that enquiry he found that the petitioners are not in possession of the land exchanged in the scheme. The Settlement Commissioner has so observed in his order dated 5/3/1994. Mr. Railkar contended that there was, in fact, no exchange of land by consent. He submitted that Rule 11 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Rules, 1959 lays down the procedure to be followed while allotting new plots to the owners. He submitted that this procedure was

not followed. Mr. Railkar further pointed out that the Additional Chief Secretary has observed in the impugned judgment that the receipt allegedly executed by respondent 3's father Yesba Rama Patil has not been signed by him. Mr. Railkar contended that the alleged delay in approaching the authorities does not vitiate the variation of the scheme because in this case fraud has been played on respondent 3's father.

11. Mr. Railkar submitted that reliance placed by the petitioner on the judgment of this court in ***Gulabrao' s case (supra)*** is totally misplaced. He submitted that section 31(1) of the said Act does not prescribe any period of limitation within which the Settlement Commissioner can vary the scheme and if the statute does not provide any period of limitation, there is no question of the Settlement Commissioner exercising his power within a reasonable period. In this connection he relied on the judgment of the Supreme Court in ***Uttam Mahale vs. Vithal Deo & Others (1997) 6 SCC 73.*** Mr.Railkar contended that on this point the learned counsel for the petitioners has wrongly placed reliance on the Supreme Court's judgment in ***Mohamad Kavi's case (supra)***. He submitted that the judgment of the Supreme Court in ***Uttam Mahale' s case (supra)*** which takes a contrary view is delivered by three learned judges of the Supreme Court whereas the judgment in ***Mohamad Kavi' s case (supra)*** is delivered by two learned judges of the Supreme Court. He submitted that, therefore, it is the view taken by the Supreme Court in ***Uttam Mahale' s case (supra)*** which holds the field.

12. Mr. Railkar further contended that the petitioners cannot draw any support from the judgment of the Civil Court in the suit filed by the petitioners against respondent 3 and the judgment in the appeal arising therefrom because the trial court could not have proceeded with the hearing of the said suit in view of the pendency of the proceedings in which there is a challenge to the order of variation of the Consolidation Scheme. Mr. Railkar contended that, therefore, the said judgments deserve to be ignored. Mr. Railkar submitted that in view of the above, no interference is necessary with the impugned orders.

13. Mr. Bandiwadekar, in rejoinder, submitted that the facts of the judgment of the Supreme Court in ***Mohamad Kavi' case (supra)*** are comparable to the facts of the present case and, therefore, that judgment would cover the present case. In this connection he relied on yet another judgment of the Supreme Court in ***Javed Ahmed Abdul Hamid Pawala vs. State of Maharashtra AIR 1985 SC 231*** where while dealing with an argument whether a Division Bench of three judges can purport to overrule the judgment of a Division Bench of two judges, the Supreme Court observed that the Court sits in Divisions of two or three judges for the sake of convenience and it may be inappropriate for a Division Bench of three judges to purport to overrule the decision of a Division Bench of two judges. Mr. Bandiwadekar contended that though in this judgment, the Supreme Court has further clarified that it

was not embarking upon this question, the observations of the Supreme Court cannot be ignored. He submitted that, therefore, the judgment in ***Mohammad Kavi's case (supra)*** which has somewhat similar fact situation must prevail and consequently reliance placed on ***Gulabrao' case (supra)*** must be held to be apt.

14. We must first refer to the facts of the case. Admittedly, Consolidation Scheme came to be applied to village Asurle in 1962. As a part of this Scheme, land Survey No.25/6 admeasuring 10 Gunthas belonging to Yesba Rama Patil, the father of respondent 3 was allotted to Appa Rama Patil, the father of the petitioner since he also owned the adjoining land Survey No.25/7 admeasuring 8 Gunthas. The said consolidated land was given Gat No.72. In exchange, Yesba Rama Patil came to be allotted lands Survey No.25/2 admeasuring 8 Gunthas, Survey No.77/2B admeasuring 2 Gunthas both owned by Appa Rama Patil and land Survey No.77/3B admeasuring 1 Guntha owned by Rama Dhondi Patil. The said consolidated land was allotted Gat No.68. Admittedly, for the area of 10 Gunthas land lost by Yesba Rama Patil, he came to be allotted an area of 11 Gunthas. Therefore, in fact, in Yesba's holding there was an increase by 1 Guntha.

15. That this exchange of lands had taken place by mutual consent is evident from the fact that statements of Yesba Rama Patil and Appa Rama Patil were recorded by the Consolidation Officer stating, inter alia, that they

had consented to the exchange of lands. Copies of said statements are annexed to the petition. Copies of possession receipts evidencing that as per the scheme lands were exchanged and possession was handed over are also annexed to the petition. The said change was recorded in the village revenue records. The contention of the petitioner that respective parties continued to cultivate their respective allotted lands appears to be correct because that has been so held by the civil courts in the judgments to which we shall soon advert.

16. It is pertinent to note that father of respondent 3 Yesba Rama Patil died in 1983. From 1962 to 1983 Yesba Rama Patil made no complaint of any fraud having been committed. It is only on 8/9/1989 that respondent 3 first time made complaint to respondent 2 - the Settlement Commissioner that the exchange of lands done in 1962 was without his father's consent. In that application, for the first time, he contended that the statements recorded by the Consolidation Officer are fabricated. Surprisingly, this belated application was granted by the Settlement Commissioner on 5/3/1994 and it was confirmed by respondent 1 on 13/10/1995. The said orders are challenged before us.

17. In our opinion, the impugned orders are liable to be set aside on the ground of delay. In this connection, we may usefully refer to the judgment of this court in ***Gulabrao' case (supra)***. In that case, 16 years after the Scheme was finalised, the original petitioner received a notice informing him that the

Scheme earlier finalised had been varied under section 32(1) of the said Act and possession as per the varied Scheme would be taken on 14/2/1989. Aggrieved by that order, the original petitioner filed a writ petition in this court. This court noted that there was no dispute that the Scheme was finalised following the procedure contemplated under the said Act way back in the year 1973 whereby the earlier Survey No.95/4 was divided into different Gat numbers and the said Scheme was enforced and it remained in force without any demur or objection by any party for about 15 years. This court then referred to sections 32 and 31A of the said Act and observed that section 32 gives power to Settlement Commissioner to vary the Scheme on the ground of error, irregularity or informality other than the errors referred to in section 31A. It was observed that though there is no time limit prescribed under section 32(1) for the Settlement Commissioner to vary the Scheme, which has come into force, but obviously even in the absence of any period prescribed under section 32, the said power can only be exercised within a reasonable period in any case. It was further observed that what would be the reasonable period for exercise of power under section 32(1) by the Settlement Commissioner may depend on facts and circumstances of each case. It was observed that ordinarily exercise of such power after three years of finalisation of the Scheme under section 22 may not be justified. This court analysed the facts before it and held that the exercise of power by the Settlement Commissioner for variation of the Scheme which had come into force in the year 1973, by initiating proceedings in the year 1988 cannot be said to be within the reasonable time. It was further observed that the earlier Scheme

was finalized in the year 1973 under the said Act to the knowledge of all the parties concerned. Nobody was aggrieved by the said Scheme finalised under the said Act and the Scheme came into force under section 22. It was further observed that the said Scheme which had been finalised in accordance with law and which came into force and continued to be in force, could not have been unsettled by initiating proceedings for variation under section 32 on the purported ground of error, irregularity or informality after a lapse of about 15 years and thus the exercise of power by the Settlement Commissioner under section 32 for variation of the Scheme in the facts and circumstances of the case was grossly unjustified.

18. We feel that these observations are clearly attracted to the present case. We have already noted that the Consolidation Scheme came to be applied to the Village Asurle in the year 1962. The lands were exchanged by consent of the parties in the year 1962 after recording statements of the parties. Possession receipts were executed. Accordingly, changes were introduced in the village revenue records and parties continued to cultivate their respective allotted lands. This arrangement was accepted by the parties without any demur. The father of respondent 3 was alive till 1988. He made no complaints about any fraud having been committed. It is only in the year 1989 that respondent 3 for the first time made an application for variation. The application for variation is made nearly after about 27 years. Therefore, the Settlement Commissioner erred in exercising his power under section 32 (1) of effecting variation in the Scheme. Period of 27 years can certainly not

be called reasonable period. Besides, serious allegations of fraud could not have been decided by him in such a manner.

19. We find no substance in the submission advanced by the learned counsel for the respondent that since section 32(1) prescribes no period of limitation, it cannot be read into it. Answer to this submission is found in the judgment of the Supreme Court in ***Mohamad Kavi's case (supra)*** where the Supreme Court has reiterated its view in the earlier decisions that where no time limit is prescribed for exercise of power under a statute, it does not mean that it can be exercised at any time. Such power has to be exercised within a reasonable time. It is true that in ***Uttam Mahale's case (supra)*** three learned judges of the Supreme Court have held that where there is a statutory rule operating in the filed, the implied power of exercise of the right within reasonable limitation does not arise. It is also true that the judgment in ***Mohamad Kavi's case (supra)*** is delivered by two learned judges of the Supreme Court. In our opinion, that would, however, not make any difference. In ***Javed Ahmed's case (supra)*** the Supreme Court has stated that the Supreme Court sits in divisions of two and three judges for the sake of convenience and it may be inappropriate for a Division Bench of three judges to purport to overrule the decision of a Division Bench of two judges and it may be otherwise where a Full Bench or Constitution Bench does so. Though the Supreme Court has clarified that it was not embarking upon this question, the above observations of the Supreme Court cannot be glossed over.

20. We must also note that in ***Mohamad Kavi' case (supra)*** the Supreme Court was dealing with suo moto powers of Mamlatdar under section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1976. In the present case, the impugned order of the Additional Chief Secretary, Government of Maharashtra is passed under section 35 of the said Act. Section 35 of the said Act refers to the power of the State Government or the Commissioner to call for and examine the record of any case for the purpose of satisfying itself or himself as to the legality or propriety of any order passed by any officer under the said Act. In ***Uttam Mahale' case (supra)***, however, the Supreme Court was dealing with execution proceedings initiated under section 21 of the Mamlatdar's Courts Act, 1906. Section 21 makes statutory provision for execution of Mamlatdar's decision. In our opinion, in ***Mohamad Kavi' case (supra)*** the Supreme Court was dealing with a provision which is somewhat similar to the provision with which we are concerned and, therefore, we are of the opinion that the present case is covered by the ratio of that judgment. In the ultimate analysis, therefore, in view of the judgment of the Supreme Court in ***Mohamad Kavi' case (supra)*** and also the judgment of this court in ***Gulabrao' case (supra),*** we feel that exercise of powers by the Consolidation Officer after about 27 years, is totally unjustified and on that ground alone the impugned orders need to be set aside.

21. Apart from this, we have judgments of the civil courts giving a

concurrent finding on the factum of possession of the lands in question. In the suit for perpetual injunction filed by the original petitioner against respondent 3 for an order of perpetual injunction restraining him from from interfering with the possession of the land in question, after considering the attendant circumstances and the revenue records, the Civil Judge, Junior Division, Panhala has come to a conclusion that the petitioner is in possession of the said land. No doubt, the civil court has considered the statements of the father of the original petitioner and the father of respondent 3 recorded in the consolidation proceedings and possession receipts executed in the consolidation proceedings while coming to its conclusion as regards possession of the land in question, but it has also considered the 7/12 extracts of the relevant period and recorded a conclusion that cumulative effect of all the circumstances is that the original petitioner never lost possession of the said land. It is pertinent to note that in appeal carried from the said judgment, the lower appellate court has confirmed the finding of the trial court.

22. We are also not impressed by the submission of the learned counsel for the respondents that the trial court could not have proceeded with the hearing of the suit in view of the pendency of the proceedings in which there was challenge to the orders of the variation of Consolidation Scheme. Challenge to the Consolidation Scheme was basically on the ground that a fraud was committed and the statement of the father of respondent 3 was fabricated. That challenge cannot be linked to the aspect of possession. The

civil courts purely considered the aspect of possession. The finding on possession was given not only on the basis of the consolidation proceedings, but also on the basis of 7/12 extracts. Therefore, no irregularity is committed by the civil courts in proceeding with the suit and the appeal. In our opinion, no substantial question of law is involved in the instant second appeal and it will have to be dismissed. In view of the fact that possession of land was exchanged; that the Scheme had, in fact, come into force and that it was accepted without any grievance by the father of respondent 3, a variation sought after 27 years was totally unjustified. Besides, we are of the confirmed opinion that the petitioners have not made out any case of error, irregularity or informality in the Scheme for exercise of power by the Settlement Commissioner under section 32(1) of the said Act. We also find no substance in the submission of Mr. Railkar that because the notification is not challenged by the petitioner, the petition must be dismissed. The petitioner has challenged the basic orders under which the Scheme was varied. If the said orders are found to be illegal even the notification will fall to the ground. In view of the above, the petition succeeds. The impugned order dated 13/10/95 passed by respondent 1 and the impugned order/intimation dated 5/3/94 issued by respondent 2 are quashed and set aside. Since there is no substantial question of law involved in the second appeal, the same is dismissed.

[SMT. RANJANA DESAI, J.]

[SMT. V.K. TAHILRAMANI, J.]